

REMARKS

Claims 1-60 are currently pending in the application with claims 1-21, 28-44, 47, 48, and 51-60 withdrawn from examination as directed to non-elected subject matter. In order to advance prosecution, Applicants have canceled claim 22, amended claims 23, 25, 45-46, and 49, and added claims 61-76. A complete listing of all the claims, in compliance with the revised amendment format, is shown above.

The amendments to the pending claims are made without prejudice, do not constitute amendments to overcome any prior art rejections under U.S.C. § 102 or 103, and are fully supported by the specification as filed.

Claims 1-21, 28-44, 47, 48, and 51-60 have been withdrawn as directed to a non-elected subject matter and are hereby canceled. Cancellation of claims 1-22, 28-44, 47, 48, and 51-60 is without prejudice or disclaimer, and Applicants make no admission regarding the patentability of this subject matter and should not be so construed. Applicants reserve the right to pursue this subject matter in this or in any other appropriate patent application.

The Office Action states that Applicants assert benefit of 60/224,383 under 35 U.S.C. § 119(e), but notes that there is not a statement of this benefit claim in the specification and there is no data sheet containing this claim of priority benefit. Accordingly, Applicants have amended the specification to include a specific reference to the earlier filed application as the first sentence of the specification following the title. In addition, Applicants submit an Application Data Sheet that accompanies this response. Applicants respectfully submit that the amendment to the specification and submission of the Application Data Sheet correctly establish the priority claim of the application as required by 37 C.F.R. § 1.78(a)(5).

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Applicants note that the Office Action states that a "priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority" However, Applicants assert that in the present case, a petition under 37 C.F.R. 1.78(a) is not required. According to M.P.E.P. § 201.11(D):

If an applicant includes a benefit claim in the application but not in the manner specified by 37 C.F.R. 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 C.F.R. 1.78(a), the Office will not require a petition under 37 C.F.R. 1.78(a) and the surcharge under 37 C.F.R. 1.17(t) to correct the claim if the information concerning the claim was recognized by the Office as shown by its inclusion on the filing receipt.

A copy of this section of the M.P.E.P. is attached as Appendix A for the convenience of the Examiner. In the present case, Applicants twice included a benefit claim in the application as an oath or declaration, one of the exemplified methods in the above section of the M.P.E.P. In the first place, Applicants submitted an unexecuted Declaration with the application which set forth the claim of priority, a copy of which is attached as Appendix B. In addition, Applicants submitted executed declarations, which also set forth the claim of priority, with a Response to Notice to File Missing Parts of Application, a copy of which is attached as Appendix C. The Response to Notice to File Missing Parts of Application, and therefore the executed declarations, was submitted on November 2, 2001, within four (4) months of the actual filing date of the application, which was August 9, 2001, and therefore within the time period set forth in 37 C.F.R. 1.78(a). The information concerning this claim was recognized by the Office as evidenced by inclusion on the filing receipt, a copy of which is attached as Appendix D. Therefore, according to the above-quoted M.P.E.P. section, in the present application, Applicants do not require a grantable petition to correct the claim of priority.

Discussion of the 35 U.S.C. § 112, ¶ 2 Rejection

Claims 22-27, 45, 46, 49, and 50 are rejected under 35 U.S.C. § 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The rejection is overcome by amendment as follows.

The Office Action stated that all of claims 22-27, 45, 46, 49, and 50 depend from claims that have been withdrawn from consideration, and therefore are vague and indefinite because it is not clear what compounds are used in the methods. Although not acquiescing to this ground of rejection, Applicants have canceled claim 22 and have amended claims 23, 25, 45-46, and 49 to better clarify the invention.

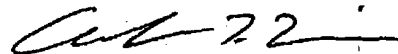
Applicants respectfully contend that the outstanding grounds of rejection of the pending claims under 35 U.S.C. § 112, ¶ 2 have been overcome by amendment in part or rendered moot by cancellation of the rejected claims. In view of the above, Applicant respectfully requests withdrawal of all 35 U.S.C. § 112, ¶ 2 rejections.

Conclusion

In view of the above remarks, the application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone call would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney.

Respectfully Submitted,

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